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IN THE

Supreme Court of the United States

October Term, 1934.

No. 499.

GREAT NORTHERN RAILWAY COMPANY,

Petitioner,

vs.

P. B. SULLIVAN, doing business as ALBERTA COAL SALES COMPANY,

Respondent.

BRIEF ON BEHALF OF PETITIONER.

R. J. HAGMAN,
J. P. PLUNKETT,
Counsel for Petitioner.

St. Paul, Minn., January 2, 1935.

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BRIEF ON BEHALF OF PETITIONER.

The petition filed by the Great Northern Railway Company seeking a review on a writ of certiorari of the judgment of the United States Circuit Court of Appeals for the Eighth Circuit in No. 9871, Great Northern Railway Company, Appellant, v. P. B. Sullivan, doing business as Alberta Coal Sales Company, Appellee, was granted by this Court on December 3, 1934.

I.

The Opinions of the Courts Below.

The opinion of the District Court of the United States for the District of Minnesota, Third Division, dated July 27, 1933, has not been officially reported but is found at pages 11 to 14 of the Record.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit, dated September 4, 1934, is reported in *Great Northern Ry. Co. v. Sullivan*, 72 Fed. (2d) 587, and is found at pages 42 to 45 of the Record.

II.

Jurisdiction.

The judgment of the Circuit Court of Appeals for the Eighth Circuit was entered on September 5, 1934 (R. 46), less than three months prior to the date of application for this writ of certiorari (U. S. Code, Title 28, Sec. 350).

The jurisdiction of the Supreme Court is invoked under paragraph (a) of Section 240 of the Judicial Code, as amended and re-enacted by the Act of February 13, 1925 (U. S. Code, Title 28, Sec. 347).

III.

Statement of the Case.

The respondent, engaged in wholesaling coal, brought an action in the District Court of the United States for the District of Minnesota against the petitioner, Great Northern Railway Company, to recover the sum of $3,990.20 awarded by the Interstate Commerce Commission as reparation on numerous carload shipments of coal from points of origin in the Province of Alberta, Canada, to destinations in the State of North Dakota. These shipments moved under through bills of lading executed at the Alberta points of origin covering the movement to the destinations in North Dakota. The freight charges collected by the petitioner at the several destinations were computed by the use of through rates made up of two factors, one a so-called proportional rate from the point of origin in Alberta to the international boundary applicable only on coal destined

to points south of the boundary, the other a proportional rate from the international boundary to the destination in North Dakota applicable only on coal originating north of the boundary. The petitioner paid over to its connecting carriers operating north of the boundary that portion of the freight charges applicable to that portion of the haul (R. 20-22).

In the proceeding before the Interstate Commerce Commission the respondent alleged only that the proportional rates applicable from the international boundary to the destinations in North Dakota were unjust and unreasonable. No complaint was made respecting the proportional rates from the origins in Alberta to the international boundary nor the through rates from the origins in Alberta to the destinations in North Dakota that resulted from the combination of these proportional rates (Rec. 24-28). The Commission in its report (142 I. C. C. 543) found, with Commissioners Brainerd, Woodlock, Porter and Taylor dissenting, that the proportional rates from the international boundary to the destinations in North Dakota were unreasonable to the extent that they exceeded a scale of rates set forth in the decision, and awarded reparation in the sum of $3,990.20, representing the difference between such proportional rates charged and those set forth in said scale. The Commission made no finding with respect to the reasonableness of the proportional rates from the origins in Alberta to the international boundary nor of the resulting through rates from such origins to the North Dakota destinations (R. 30-39).

The petitioner having refused to pay the reparation awarded by the Commission, the respondent, on April 22, 1931, brought an action on the award in the District Court of the United States for the District of Minnesota, Third Division (R. 1). At the trial a jury was waived (R. 10) and the case was submitted on a stipulation of facts (R. 19). At the conclusion of

the case the petitioner moved the trial court for judgment in favor of the petitioner on the ground that there was no substantial evidence of record to support any other conclusion than that the petitioner was entitled to judgment (R. 25). The trial court denied this motion (R. 11) and on July 27, 1933, entered a judgment in favor of the respondent for the amount of the reparation awarded by the Commission with interest (R. 11-16).

The petitioner perfected an appeal to the Circuit Court of Appeals for the Eighth Circuit (R. 16-41) in which the following errors were assigned (R. 18):

1. The United States District Court for the District of Minnesota, Third Division, erred in failing to find as a matter of law that the findings of fact made by the Interstate Commerce Commission were not sufficient in law to support its order awarding damages to the plaintiff.

2. That said court erred in denying defendant's motion for finding and judgment in its favor upon the ground that there was no substantial evidence of record to support any other conclusion than that defendant was entitled to judgment.

On September 4, 1934, the Circuit Court of Appeals rendered a decision in which it held that it was the petitioner's duty to publish and charge a just and reasonable rate for the transportation of the respondent's freight from the international boundary to points in the United States; that the Interstate Commerce Act empowered the Commission to regulate the rates over that part of the transportation which took place within the United States; that in collecting the unjust and unreasonable proportional rates from the international boundary to points in the United States the petitioner committed a tort making it liable for any damages resulting therefrom; that the court would assume that the Commission considered the proportional rates from the international boundary to the

points in the United States as part of the through rates from the origins in Canada to the destinations in the United States; and that the respondent's damages were properly measured by the difference between the proportional rates charged for the transportation from the international boundary to the points in the United States and rates for the same transportation found reasonable by the Commission (R. 42-45).

IV.

Specifications of Error.

1. *The Circuit Court of Appeals erred in finding and holding* that the respondent had suffered damages measured by the difference between the proportional rates from the international boundary to the North Dakota destinations applied by the petitioner and those found reasonable by the Commission.

2. The Circuit Court of Appeals erred in finding and holding that in finding unreasonable the proportional rates from the international boundary to the North Dakota destinations the Commission, in effect, found unreasonable the through rates from the Alberta origins to the North Dakota destinations.

3. The Circuit Court of Appeals erred in entering judgment against the petitioner and in favor of the respondent.

ARGUMENT.

Points Relied Upon.

A. The respondent has failed to prove that he sustained any damages in consequence of the petitioner's tort in collecting the unreasonable proportional rates from the international boundary to the destinations in the United States.

1. In order to recover for the violation of the Act by a common carrier a shipper must show that he has sustained damages in consequence of such violation.

2. The respondent has made no specific proof of pecuniary damage.

3. A finding by the Commission holding that one factor of a through rate was unreasonable and specifying the extent of such unreasonableness is not sufficient evidence to support a judgment for damages sustained on a shipment that was transported on the through rate.

B. In finding that the proportional rates from the international boundary to the destinations in the United States were unreasonable the Commission did not, by inference, find that the through rates were unreasonable.

A

The respondent has failed to prove that he sustained any damages in consequence of the petitioner's tort in collecting the unreasonable proportional rates from the international boundary to the destinations in the United States.

1. *In order to recover for the violation of the Act by a common carrier a shipper must show that he has sustained damages in consequence of such violation.*

Section 8 of the Interstate Commerce Act provides:

> "In case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby *for the full amount of damages sustained in consequence* of any such violation of the provisions of this Act * * *." (Italics added.)

Therefore in order to recover damages from a carrier under the Act one must prove not only the violation of some provision of the Act by the carrier but also that he has suffered pecuniary damage in consequence of such violation. *Parsons v. C. & N. W. Ry. Co.*, 167 U. S. 447; *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S. 184; *Davis v. Portland Seed Co.*, 264 U. S. 403.

2. *The respondent has made no specific proof of pecuniary damage.*

The respondent offered no evidence whatever on the question of damages except the finding of the Commission that the proportional rates south of the international boundary were unreasonable to the extent that they exceeded the rates prescribed for the future. He contends that no other evidnce was necessary.

3. *A finding by the Commission holding that one factor of a through rate was unreasonable and specifying the extent of such unreasonableness is not sufficient evidence to support a judgment for damages sustained on a shipment that was transported on the through rate.*

As previously stated the shipments involved in this case moved from points in Canada to points in the United States on through bills of lading executed at the origins in Canada covering the entire movement from such origins to destinations in the United States. Freight charges collected at the destinations were computed by the use of through rates made up of two factors, one a proportional rate from the Canadian origin to the international boundary, the other a proportional rate from the boundary to the destination in the United States (R. 21). The Commission found that the proportional rates from the international boundary to the destinations in the United States were unreasonable to the extent that they exceeded a scale of rates set forth in its decision. It made no finding with respect to the proportional rates from the Canadian origins to the international boundary nor with respect to the through rates from such Canadian origins to the destinations in the United States (R. 30-39).

As the Supreme Court said in *Keogh v. C. & N. W. Ry. Co.*, 260 U. S. 156, 165, damages must be proved by facts from which their existence is logically and legally inferable. They cannot be supplied by conjecture. It does not follow because one factor of a through rate was unreasonable that the through rate as a whole was unreasonable. In a footnote on page 283 of *U. S. v. Abilene & Southern Ry. Co.*, 265 U. S. 274, the Supreme Court said:

> "The case is wholly unlike those in which it is held that where a shipper attacks a through rate all participating carriers must be made respondents, even though the through rate is made up of separately established elements. The complainant may wish to direct this attack only against one of these. But it is only the through rate which is in issue. *It may be reasonable although one of its elements is not.*" (Italics added.)

Again in *L. & N. R. R. Co. v. Sloss-Sheffield Co.*, 269 U. S. 217, 234, this Court said:

> "The division of the joint rate among the participating carriers is a matter which in no way concerns the shipper. The shipper's only interest is that the joint rate be reasonable as a whole. It may be unreasonable although each of the factors of which it is constructed was reasonable. *It may be reasonable although some of the factors or of the divisions of the participants, were unreasonable.*" (Italics added.)

It is true that in that case the rate in question was a joint through rate published in a single tariff by the joint action of all the participating carriers, whereas here the separate factors were published in separate tariffs by the individual action of the participating carriers. But in the *Sloss-Sheffield case* the joint rate had been constructed out of existing proportional rates previously published in separate tariffs. The truth of the principle enumerated in that case is not affected by the mere mechanics of publication in which the shipper has no interest. Regardless of the manner of publication it is true that a through rate "may be reasonable although some of the factors or of the divisions of the participants, were unreasonable".

The Interstate Commerce Commission expressed the same thought in *Cairo Board of Trade v. C. C. C. & St. L. Ry.*, 46 I. C. C. 343, when it said on page 351:

> "An excessive reshipping (proportional) rate might produce a reasonable through charge in connection with an unduly low inbound rate and vice versa."

Not only is it true that no inference as to the reasonableness of the through rate can be drawn from the fact that one factor was unreasonable but, as pointed out in the dissenting opinion of two commissioners when this case was before the Interstate Commerce Commission, the record affirmatively shows that the

through rates were reasonable (R. 37). Take for example a shipment that moved from Drumheller, Alberta, to Sarles, North Dakota. The distance from Drumheller to the international boundary is 627 miles for which a rate of $3.30 per ton was charged (R. 25). The scale prescribed by the Commission only ran as high as 500 miles for which a rate of $3.95 was prescribed (R. 36). The distance from the international boundary to Sarles is 293 miles for which a rate of $3.50 was charged (R. 25). The rate prescribed by the Commission for that distance was $2.90 (R. 36). Thus it will be seen that if both factors of the through rate had been on the Commission's scale the through rate would have been 5 cents higher than that charged to the respondent. This example is representative of all the shipments and shows affirmatively that the through rates were reasonable. The fact is that the Canadian lines published such low rates to the boundary that, when combined with the rates south of the boundary, they produced reasonable through rates in spite of the fact that the rates south of the boundary standing alone were unreasonable.

But it will be contended by respondent that it is immaterial whether or not the through rates were unreasonable; that if the record shows that the factors south of the international boundary were unreasonable that is sufficient to support an award of damages even if the through rates were in fact reasonable. That was the respondent's position in the Court below and it must necessarily be his position here for it seems clear that the record does not show that the through rates were unreasonable. In the court below as well as in its brief in answer to the petition for certiorari in this Court the respondent relied upon three cases in support of this position, viz.:

L. & N. R. R. Co. v. Sloss-Sheffield Co., 269 U. S. 217.

N. Y. N. H. & H. R. Co. v. Ballou & Wright, 242 Fed. 862.

Alberta Coal Sales Co. v. Can. Natl. Rys., 142 I. C. C. 543.

The first, which has been referred to before herein, dealt with reparation claimed on shipments of pig iron from points in Alabama to points on and north of the Ohio River. The Commission had found that the joint through rates from the points of origin to the final destinations were unjust and unreasonable to the extent that they exceeded rates prescribed for the future and awarded reparation for the excess. The carriers contended among other things that because of special facts shown in the record it was not the Sloss-Sheffield Company but the purchasers of iron from it who paid and bore the charges and who were entitled to reparation. In discussing this contention the court said:

> "The carrier concedes, as it must under *Southern Pacific Co. v. Darnell-Taenzer Lumber Co.*, 245 U. S. 531, that a recovery for excessive freight charges can be had under Section 1 without specific proof of pecuniary loss, and that the measure of damages is the amount of the excess exacted."

But in that case, as well as in the *Darnell-Taenzer case* cited therein, the Commission found the through rate unreasonable, the very thing which it failed to do here. Consequently the issue presented here was not before the court in those cases, and they cannot be considered as authority for the respondent's position in this case.

In the *Ballou & Wright case*, likewise, the Commission had found the through rate unreasonable and the only question was whether the shipper could recover in view of the evidence that it had passed the freight charges on to buyers as a part of the cost of the goods sold.

The *Alberta Coal Sales case* was the instant case when before the Commission and, of course, the decision of the Com-

mission is not authority in this proceeding where its correctness is being challenged.

Thus we see that none of the cases cited by the respondent is authority for respondent's contention. The issue in this case was not presented or decided in those cases. Nor is there any analogy between the issue here involved and the issues there decided that would justify applying the rule there laid down to this case.

It is self-evident, of course, that if the total freight charges exacted from a shipper for the transportation of goods from a point of origin to destination were unreasonable the shipper would sustain damages measured by the amount of the excess exacted. His injury would be the direct result of and would be in direct proportion to the excess exacted. If the excess were great his injury would be great; if the excess were slight his injury would be slight.

But it does not follow from this that if the total freight charges exacted for the transportation of goods from a point of origin to destination were *not* unreasonable the shipper would nevertheless sustain damages if one of the factors used to compute the through rate was unreasonable nor that such damages should be measured by the amount of the excess of such factor over a reasonable factor. The factors that make up a through rate of this kind merely represent the division of such through rate among the participating carriers. *Morrell & Co. v. N. Y. C. R. R. Co.*, 104 I. C. C. 104, 128. But the division of a rate among the participating carriers is a matter that in no way concerns the shipper. For one reason or another one carrier may take less and another may take more than what would seem to be a reasonable proportion of the through rate. But a shipper is not injured because one carrier may receive more than a reasonable proportion of the through rate. His only

interest is that the rate be reasonable as a whole. *Louisville & Nashville R. R. Co. v. Sloss-Sheffield Co., supra.*

The Commission has recognized this principle and applied it consistently to cases where the entire transportation is within the United States. In *Stevens Grocer Co. v. St. L. I. M. & S. Ry. Co.*, 42 I. C. C. 396, 398, the Commission said:

> "When the through rate or charge is made up of separately established rates or charges, applicable to the through business, the through rate or charge must be attacked as violative of the act, although the violation may be believed to be occasioned by a particular factor or factors thereof; in such case the complainant should be prepared at the hearing to prove the unlawfulness of the through rate itself and that this is due to a particular factor or factors."

In *Cairo Board of Trade v. C. C. C. & St. L. Ry. Co.*, 46 I. C. C. 343, the Commission modified its decision in the Stevens Grocer Co. case to the extent of holding that the Commission might find that a proportional rate was unreasonable in a case where the through rate was not attacked but it laid down the rule that in determining whether a shipper had been *damaged* the Commission must consider the total through charges, saying on page 350:

> "The rule is stated in the *Stevens Grocer Co. Case* more broadly than it should be. In determining whether or not a complainant has been damaged by the exaction of unreasonable or unduly preferential reshipping (proportional) rates the total through charges paid from point of origin must be considered."

Again in the same case it is said, page 351:

> "An excessive reshipping (proportional) rate might produce a reasonable through charge in connection with an unduly low inbound rate and vice versa."

In *Atlantic Terra Cotta Co. v. A. & W. P. Ry. Co.*, 151 I. C. C. 45, the Commission said on page 52:

> "In *Cairo Board of Trade v. C. C. C. & St. L. Ry. Co.*, 46 I. C. C. 343, 350, we announced a principle, which has since been consistently followed, that where a through rate is made up of separately established components we may pass upon the lawfulness of any one of the components independent of the others for the future, but where the matter of reparation on past shipments is concerned the total through charges must be considered."

The same principle was very neatly expressed by Commissioner Tate in a dissenting opinion in *The Newsprint Paper Investigation*, 197 I. C. C. 738, 791, when he said:

> "It seems clear to me that it was the failure to publish a just and reasonable rate from the border that constituted the tort. Had this publication been made, even if the joint international rate had been unreasonable, it would have constituted an illustration of *damnum absque injuria*, just as, if the joint international rate had not been unreasonable, the tort itself, to-wit, the failure to publish a just and reasonable rate from the border, would have been an illustration of *injuria sine damno*."

While the precise question here under consideration has never been decided by the Supreme Court it is our opinion that this court recognized the principle for which we are contending here and applied it in *News Syndicate Co. v. N. Y. C. R. R. Co.*, 275 U. S. 179. In that case numerous carload shipments of newsprint paper had been made from Thorold, Ontario, to New York City at a joint through rate from the point of origin to destination which the Commission found was unreasonable. The carriers participating in that part of the transportation within the United States did not publish a rate on this commodity from the international boundary to New York City.

The Commission awarded reparation measured by the difference between the charges exacted for the through transportation and those that would have accrued at the rates found reasonable by the Commission. In a suit brought in the District Court to enforce that award the District Court sustained a demurrer to the complaint on the ground that it failed to state a cause of action, holding that the Commission's order was void for want of jurisdiction because it dealt solely with charges for transportation from a point in Canada to a point in the United States. Upon appeal to the Circuit Court of Appeals that court certified certain questions to the Supreme Court, among them being the following:

> "1. Where a railroad of the United States and a railroad of the Dominion of Canada unite in the publication of a joint through rate from a point within the Dominion of Canada to a point within the United States, the rate covering transportation both in Canada and in the United States, has the Interstate Commerce Commission of the United States jurisdiction, on complaint of a shipper or consignee made against the United States railroad alone, to determine the reasonableness of such joint through rate?"

The answer was "Yes, for the ascertainment of damages". In discussing this question the court said:

> "As to question 1.—The Interstate Commerce Act applies to the lines that carried, and to the transportation of, the paper from the international boundary to New York City. Secs. 1 (1) and (2). It was the duty of defendants in error to establish just and reasonable rates for that service. Secs. 1 (5), Sec. 4 (1) and 7. They failed to make or publish any rate applicable to that part of the transportation. Section 8 makes them liable for damages sustained *in consequence of such failure. Had the through rate been just and reasonable, no damages*

would have resulted to plaintiff in error. Its right to reparation does not depend upon the amounts retained by defendants in error pursuant to agreed divisions. *Louisville & Nashville R. R. v. Sloss-Sheffield Co.*, 269 U. S. 217, 231. Their breach of the statutory duty was a proximate cause of the losses complained of. The failure to establish rates covering the transportation from the international boundary contravened the provisions of the Act and compelled plaintiff in error to pay the through charges complained of. The Commission had jurisdiction to determine whether plaintiff in error was entitled to an 'award of damages under the provisions of this Act for a violation thereof.' Sec. 16 (1). And it was the duty of the Commission to ascertain the damages sustained. It is obvious that, in the ascertainment of damages, the Commission had jurisdiction to determine the reasonableness of the charges exacted." (Italics added.)

The analogy between that case and the case at bar is very close. Both involved shipments from points in Canada to points in the United States. In both cases it was the duty of the American carriers to establish just and reasonable rates from the international boundary to the American destination. In both cases the American carriers failed in that duty. In the *News Syndicate case* no rate at all was published; in the case at bar an unreasonable rate. In both cases Section 8 of the Interstate Commerce Act made the American carriers "liable for damages sustained in consequence of such failure." How should those damages be measured? In the *News Syndicate case* the Supreme Court said: "Had the through rate been just and reasonable, no damages would have resulted to plaintiff in error." The measure of damages, therefore, was the extent to which the through rate was unreasonable. Should the analogy between these cases stop here? Is there any reason why the measure of damages which the Supreme Court laid

down in the *News Syndicate case* should not apply to the case at bar? We can think of none. The only difference between the facts of the two cases is that in the *News Syndicate case* no rate at all was published from the boundary whereas in this case an unreasonable rate was published. Is this difference sufficient to justify a different measure of damages? The decision in the *News Syndicate case* indicates that the Supreme Court measured the damages by the through rate, not because no rate had been published from the boundary, but because that was the proper measure of damages. "Had the through rate been just and reasonable, no damage would have resulted to plaintiff in error". We submit that the same principle should be applied to the case at bar. If the through rate in this case was just and reasonable no damages resulted to the respondent.

We submit, therefore, that a finding by the Commission holding that one factor of a through rate was unreasonable and specifying the extent of such unreasonableness is not sufficient evidence to support a judgment for damages sustained on a shipment that was transported on the through rate and since that was the only evidence introduced on the question of damages we submit that the respondent failed to prove damages and judgment should have been entered for the petitioner.

B

In finding that the proportional rates from the international boundary to the destinations in the United States were unreasonable the Commission did not, by inference, find that the through rates were unreasonable.

In discussing the principle for which we are contending here and which we urged before the Circuit Court of Appeals, that Court said:

"In collecting the exorbitant freight charges on the traffic in question, defendant committed a tort, making it liable for any damage resulting therefrom, but defendant ingeniously argues that inasmuch as the Commission did not find that the entire through-rate was excessive or exorbitant, it cannot be said that plaintiff has been injured. The tariff as published, established the rate in question as a proportional rate. It was applicable only as a part of the through-rate, and as such it was found to be unjust, unreasonable, and excessive. In other words, the Commission considered this rate not as an independent rate from the international boundary to the point of destination, but as a part of the international through-rate from point of origin to point of destination. If, as argued by defendant, the rate from the point of origin to the international boundary may have been very low, still we must assume that the Commission considered the rate in question as a part of the through-rate." (R. 44-45.)

We are not clear what thought the Court meant to convey by that paragraph. Of course every proportional rate is by its very nature a part of a through rate and cannot be used except as such. Standing alone it has no more significance than has a word indicating a fractional part such as "half" or "fourth," without knowledge of the whole of which it indicates a part. We have contended throughout this proceeding that a proportional rate should not be considered except as part of a through rate and that the reasonableness of the through rate as a whole cannot be determined by considering only some fractional part of which it is composed. In our opinion it simply does not follow that the whole rate must be unreasonable because a portion of it is found to be so. We believe that the decisions of this Court to which we have called attention support our view.

But if the Circuit Court of Appeals meant to imply that the Commission in considering the proportional rate as a part of

the through rate and in determining that it was unreasonable, thereby, in effect, found that the through rate was unreasonable to the same extent and in the same amount as the proportional rate, we submit that there was no justification for such a conclusion. As the Supreme Court said in *Keogh v. C. & N. W. Ry.*, 260 U. S. 156, 165, damages must be proved by facts from which their existence is logically and legally inferable. They cannot be supplied by conjecture. If the Commission had intended to find that the through rate was unreasonable to the same extent as the proportional rate it would have said so in plain terms and not left it to conjecture. That it was not the intent of the Commission to make such a finding is made clear from the dissenting of Commissioner Brainerd, concurred in by Commissioner Woodlock (R. 37), in which attention is called to the fact that only the proportional rate is found unreasonable, and the failure to find the through rate unreasonable is made the basis of the dissent. It cannot be doubted that the Commission, with a clear realization of what it was doing, based its award of damages solely on the finding that the proportional rate was unreasonable and without giving any consideration whatever to the reasonableness of the through rate, under the belief that respondent's damages might properly be measured by the extent to which such proportional rate was unreasonable and regardless of the fact that the through rate may have been reasonable.

There was no finding by the Commission that the through rate was unjust and unreasonable and consequently there was no evidence from which the District Court could find that rate was unjust and unreasonable. In the absence of evidence the law will presume that men acted lawfully rather than unlawfully. Therefore the law will presume that the through rate collected in this case was just and reasonable

rather than unjust and unreasonable. That being true the only question is whether or not under these facts the respondent is entitled to damages by way of reparation. We submit that he is not.

Respectfully submitted.

R. J. HAGMAN,
J. P. PLUNKETT,
Counsel for Petitioner.

St. Paul, Minn., January 2, 1935.